

Remarks

Claims 35-54, 56-57, 60-64, 68-70, 73-109, 111-113, 115-117, and 120 are pending. Of these claims, claims 44-51, 54, 61-62, 74-78, 82-83, 96, 99, 103-107, 115, and 120 are withdrawn; and claims 35-43, 52-53, 56-57, 60, 63-64, 68-70, 73, 79-81, 84-95, 97-98, 100-102, 108-109, 111-113, and 116-117 are rejected.

Nonstatutory Obviousness-Type Double Patenting Rejection

In the March 17, 2010 Office Action, the Examiner maintained the provisional rejection of claims 35-43, 52-53, 56-57, 60, 63-64, 68-70, 73, 79-81, 84-95, 97-98, 100-102, 108-109, 111-113, and 116-117 on the ground of nonstatutory obviousness-type double patenting over claims 230-235, 237-245, and 255-257 of U.S. Serial No. 10/488,334. Specifically, the Examiner asserted that although the conflicting claims are not identical, they are not patentably distinct from each other because the claims cover substantially the same invention with the new claims merely providing a distance well known in the art.

On June 8, 2010, U.S. Serial No. 10/488,334 issued as U.S. Patent No. 7,734,355 (the '355 patent). Accordingly, this ground of rejection would no longer be provisional.

Applicants' Response

Applicants submit, as **Exhibit A** attached hereto, a Terminal Disclaimer signed by an authorized official of the assignee of record of both U.S. Serial No. 10/488,334 (the '355 patent) and the subject application, namely, Bio Control Medical (B.C.M.) Ltd. The Terminal Disclaimer includes a copy of the Patent Assignment Abstract of Title for the subject application as **Exhibit B** and a copy of the Patent Assignment Abstract of Title for U.S. Serial No. 10/488,334 as **Exhibit C**.

In accordance with 37 C.F.R. §1.321(b), the Terminal Disclaimer specifies the portion of the term of patent being disclaimed, states the present extent of assignee's ownership interest in the patent to

be granted, and is accompanied by the fee set forth in 37 C.F.R. §1.20(d). Accordingly, applicants maintain that the Terminal Disclaimer submitted herewith complies with the requirements of 37 C.F.R. §1.321(b).

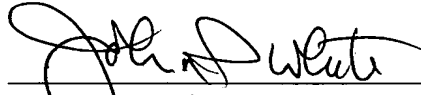
Based on the submission of the Terminal Disclaimer, applicants maintain that the double patenting rejection set forth in the March 17, 2010 Office Action has been overcome and respectfully request that the Examiner reconsider and withdraw this ground of rejection and allow claims 35-43, 52-53, 56-57, 60, 63-64, 68-70, 73, 79-81, 84-95, 97-98, 100-102, 108-109, 111-113, and 116-117.

Further, in accordance with MPEP §821.04, applicants hereby respectfully request withdrawal of the restriction requirement with respect to withdrawn apparatus claims 44-51, 54, 61-62, 74-78, 82-83, 96, 99, and 103-107. Each of these withdrawn claims depends from and includes all the limitations of one of the allowable claims enumerated in the preceding paragraph. Further, applicants reserve the right to request rejoinder of these claims. Accordingly, these claims should be rejoined and allowed.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee, other than the enclosed fee of \$130.00 for filing a Terminal Disclaimer, is deemed necessary in connection with the filing of this Communication. However, if any additional fee is required, authorization is hereby given to charge the amount of such fee to Deposit Account No. 03-3125.

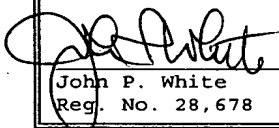
Respectfully submitted,



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John P. White  
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June 17, 2010  
Date



# EXHIBIT A